

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 74-1982

TABLE OF CONTENTS  
FOR APPENDICES

1. Docket Sheet	I.
2. District Court Decision of July 19, 1974	II.
3. Bankruptcy Order of June 14, 1974	III.
4. Supplemental Opinion of June 10, 1974 of Bankruptcy Court	IV.
5. Opinion of May 17, 1974 of Bankruptcy Court	V.
6. Petition and Order for Continuation of Business of February 13, 1974 of Bankruptcy Court	VI.
7. Supplemental Stay Order of the District Court of July 12, 1974	VII.
8. Stay Order of July 3, 1974 of the District Court	VIII.
9. Stay Order of June 20, 1974 of Bankruptcy Court	IX.



PAGINATION AS IN ORIGINAL COPY



NAME OF BANKRUPT/DEBTOR <b>May Lee Industries, Inc.</b>				DIST. NO. DIV. NO. <b>74 B 100</b>		DOCKET NO. <b>74 B 100</b>	
Last First Middle <b>MAY LEE INDUSTRIES, INC.</b>				CHAPTER OR SECTION <b>11-322</b>		CHECK IF <input checked="" type="checkbox"/> Voluntary	
				DATE PETITION FILED <b>2/11/74</b>		<input checked="" type="checkbox"/> Involuntary	
				DATE CLOSED		<input checked="" type="checkbox"/> Free and clear of all liens	
				DATE DISCHARGED		<input checked="" type="checkbox"/> Corporation	
ADDRESS OF BANKRUPT/DEBTOR (Number and Street) <b>175 West Avenue South</b>				OCCUPATION <input type="checkbox"/> Farmer <input type="checkbox"/> Employee <input type="checkbox"/> Professional <input type="checkbox"/> Other (Non business)			
CITY ZONE COUNTY STATE <b>New York</b> <b>New York</b> <b>NY</b>				DISCHARGE <input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/> Waived or not applied for		<input checked="" type="checkbox"/> Merchant <input type="checkbox"/> Manufacturer <input type="checkbox"/> Other (Business)	
NO ASSET CASES ONLY CLAIMS AS SCHEDULED <input checked="" type="checkbox"/>				TOTAL \$		PRIORITY \$	
				SECURED \$		UNSECURED \$	
ATTORNEY FOR BANKRUPT OR DEBTOR <input checked="" type="checkbox"/>		NAMES AND ADDRESSES <b>175 West Avenue South, N.Y., N.Y. 10036, Tel. (212) 47-1031</b>					
ATTORNEY FOR PETITIONING CREDITORS <input checked="" type="checkbox"/>							
RECEIVER <input checked="" type="checkbox"/>							
ATTORNEY FOR RECEIVER <input checked="" type="checkbox"/>							
TRUSTEE <input checked="" type="checkbox"/>							
ATTORNEY FOR TRUSTEE <input checked="" type="checkbox"/>							
CHANGES OF PRINCIPALS							
DATE		PROCEEDINGS					
2/11/74		Filed Petition in proceedings under Chapter XI-322, Resolution, Schedules, List of Creditors, Summary of Debts and Assets, Affidavit pursuant to Rule 11-1, (19) List of Creditors, Pending Law Suits, Statement of Affairs and Statement of Executory Contracts. Referred to: BANKRUPTCY JUDGE GILSON.					
2/15/74		Received from Bankruptcy Judge CERTIFIED COPY of Petition and Order for continuation of business, Dated: 2/14/74.					
2/26/74		Received from Bank. Judge COPY of order deleting creditor from Schedule A-3. Dated 2/19/74.					

FORM BK 74 D  
SEP. 1962

UNITED STATES DISTRICT COURTS  
BANKRUPTCY DOCKET - COPY

☐ CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

- 6/21/74 Filed ORDER TO SHOW CAUSE to Modify a Referee's order and with temporary restraining order. (upon annexed affidavit on behalf of The Chartered Bank by Robert M. McCulloch, Jr. etc. ORDERED that May Lee Industries, Inc., debtor, show cause in Room No. 506 on the 25 day of June, 1974 at 10:30 A.M. why the Hon. JUDGE KNAPP should not forthwith stay or modify the effect of the order of Bankruptcy Judge John J. Galgay, dated: 6/14/74, etc.) JUDGE KNAPP, DATED: 6/20/74. f. Ordered that secured creditor, The Chartered Bank, shall give bond in the sum of \$10,000.00. etc.
- 6/21/74 Filed bond of The Chartered Bank in the sum of \$10,000.00., National Surety Corp. NY. Dated: 6/20/74. f.
- 6/25/74 Filed MAY LEE INDUSTRIES, INC. BRIEF in opposition to Chartered Bank's Application for modification of the stay order of the Bankruptcy J. Galgay dated: 6/20/74. sub. by: Arutt, Nachamie and Benjamin, attorneys for Debtor.
- 6/25/74 Filed AFFIDAVIT OF DAVID C. BUXBAUM, Pres. of Debtor in opposition to the application by Chartered Bank which is attempting to obtain modification of a Stay Order of HON. GALGAY, Dated: 6/20/74. Sworn to: 6/24/74
- 6/25/74 Filed MEMO-ENDORSED (on back of OSC dated: 6/21/74) ..... Stay continued. Motion referred back to JUDGE GALGAY. SO ORDERED. JUDGE KNAPP, Dated: 6/25/74.
- (NOTE: ALL ABOVE PAPERS IN THE OFFICE OF BANKRUPTCY JUDGE GALGAY)
- 6/27/74 Received from Bankruptcy J. NOTICE OF APPEAL to District Court, from the Order of the Bankruptcy J. entered on: 6/14/74, said order pursuant to the opinions of the Bankruptcy J. 5/17/74, and 6/10/74, etc., by: Arutt, Nachamie and Benjamin, Attorneys for Debtor. Dated: 6/21/74.
- 6/27/74 Received from Bankruptcy J. DESIGNATION of Contents and statement of the issues pursuant to Rule 806 etc. by: Arutt, Nachamie and Benjamin, attys. for Debtor. Dated: 6/21/74.
- 6/27/74 Received from Bankruptcy J. TRUE COPY OF ORDER .... on the basis of the order entered herein staying enforcement of the order which is the subject of this appeal. RET. JULY 2nd, 1974 at 10:30 A.M. in Room No. 506. JOHN J. GALGAY, DATED: 6/27/74
- 7/2/74 Received from Bankruptcy J. Designation of Additional Contents, sub. by: Hawkins, Delafield and Wood, attys. for secured creditor: CHARTERED BANK, Dated: 6/28/74. f.
- 7/2/74 Filed BRIEF for Appellant, debtor on appeal from order of Bankruptcy J. sub. by: Arutt, Nachamie and Benjamin, attorneys for Debtor.
- 7/3/74 (2) UNSIGNED ORDERS FORWARDED TO BANKRUPTCY JUDGE, GALGAY. (Arutt, Nachamie, and Benjamin, attorneys for Debtor.)  
CONTINUED ON PAGE 3.



DATE	PROCEEDINGS	DOCKET NUMBER
7/3/74	Filed ORDER re:application of May Lee Industries, Inc. debtor by attys. Arutt, Nachamie and Benjamin, for an order extending the stay of Bankruptcy J. Galgay dated: 6/20/74, and upon all prior proceedings and pleadings etc., Ordered, that all other portions of Judge Galgay's June 20th order not expressly dissolved herein shall remain in full force and effect, etc. JUDGE WARD, DATED: 7/3/74. <u>SEE ORDER FOR FULL DETAILS</u> . COPY TO BANKRUPTCY JUDGE, GALGAY.	
7/5/74	Filed Reply Brief of Appellant, Debtor to Briefs of Appellees on Appeal (Dec. Stay Order of the Bankruptcy Judge, regarding the reclamation proceedings of the Appellees, Chartered Bank & Chemical Bank, was granted, pursuant to certain terms and conditions, which were incorporated into an order signed on 7/3/74, etc.) sub. by: David C. Buxbaum, of counsel and pro se. f.	
7/8/74	Filed AFFIDAVIT OF SERVICE of Pamela Owen re: Above Reply Brief, sworn to: 7/8/74. f.	
7/9/74	Filed REPLY BRIEF OF APPELLEE CHEMICAL BANK to the Debtor-Appellant. (argument keyed to the points raised in said reply brief, etc.) sub. by: Otterbourg, Steindler, Houston and Rosen, attorneys for Chemical Bank. f.	
7/11/74	Filed REPLY BRIEF OF APPELLANT in opposition to Appellee's Petition for reclamation. sub. by: David C. Buxbaum, PRO-SE on behalf of May Lee Ind.; Inc. etc. Dated: 7/10/74. f.	
7/11/74	Filed AFFIDAVIT OF SERVICE of Laura Santangelo and Florence PI re above reply brief. sworn to: 7/10/74. f.	
7/12/74	Filed AMENDED ORDER -SUPPLEMENTING ORDER OF: 7/3/74 .... JUDGE WARD: DATED: 7/12/74. <u>SEE ORDER FOR FULL DETAILS</u> . COPY TO BANKRUPTCY JUDGE GALGAY.	
7/19/74	Filed MEMORANDUM-DECISION ... This is an expedited appeal by May Lee Ind. Inc. from a determination of Bankruptcy J. Galgay that the Chartered Bank and Chemical Bank have valid perfected security interests in assets of the debtor etc., The Court considers the debtor's remaining contentions to be without merit. Accordingly, the order of the Bankruptcy Court that Chartered and Chemical have valid perfected security interests in assets of the debtor is affirmed and the stay previously entered is vacated. It is so ordered. JUDGE WARD, DATED: 7/19/74. COPY TO BANKRUPTCY JUDGE, GALGAY.	
7/22/74	Filed NOTICE OF APPEAL, to the District Court of Appeals, from the decision and order of Hon. R.J. Ward etc., Sub. by David C. Buxbaum on behalf of May Lee Industries, Inc., Debtor-Appellant. m/n (4)	

74 B 166 May Lee Industries, Inc.

DATE	PROCEEDINGS
Jul 29-74	Filed affdvt of David C. Buxbaum.
Jul 29-74	Filed memorandum of law of the Chemical Bank in support of its application for reclamation.
Jul 29-74	Filed brief of appellee the chartered Bank.
Jul 29-74	Filed memorandum of law of Chemical Bank in opposition to the appeal of May Lee Industries, Inc. from the order of Bankruptcy Judge John J. Galgay dated June 14-74
Jul 29-74	Filed reply brief in opposition to Chemical Bank's Application for reclamation.
Jul 29-74	Filed brief for the debtor in opposition to petition of chartered bank.
Jul 29-74	Filed reply brief of appellee the Chartered Bank.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter	:	
of	:	74 B 166
MAY LEE INDUSTRIES, INC.,	:	
Debtor.	:	

-----x

This is an expedited appeal by May Lee Industries, Inc. ("May Lee" or "the debtor"), the debtor-in-possession under Chapter XI of the Bankruptcy Act, 11 U.S.C. § 701 et seq., from a determination of Bankruptcy Judge John J. Galgay that the Chartered Bank ("Chartered") and Chemical Bank ("Chemical") (together "the banks") have valid perfected security interests in assets of the debtor. For the reasons hereinafter stated, the order of the Bankruptcy Court is affirmed.

On February 11, 1974, May Lee filed a voluntary petition in bankruptcy under Chapter XI. Thereafter by Orders to Show Cause dated March 14 and March 27, 1974, respectively, Chartered and Chemical petitioned the Court for reclamation of property in the possession of May Lee in which Chartered and Chemical claimed to have valid

6

perfected security interests. The debtor opposed both applications, and trials on the merits were held on April 9 and 19, 1974.

In an opinion dated May 20, 1974, Judge Galgay found that Chartered "has a perfected valid security lien on all collateral which was the subject of a series of trust receipts described in Exhibit A attached to its Order to Show Cause dated March 14, 1974 and is entitled to the return of such goods and other collateral which is the subject of the trust receipts" (Opinion, p. 7), and that Chemical "has a perfected valid security lien on all collateral which was the subject of its security agreement and is entitled to obtain its collateral" (Opinion, p. 12).

The debtor moved for a rehearing on May 30, 1974, prior to entry of an order by the Bankruptcy Court. Following a rehearing held on June 7, 1974, Judge Galgay filed a supplemental opinion dated June 10, 1974, in which he again found in favor of the banks. On June 14, 1974, he entered an order consistent with his opinion and supplemental opinion. Upon the application of the debtor, Judge Galgay signed an order on June 20, 1974, enjoining the banks from enforcing the order of June 14, 1974, pending the hearing of this appeal. This stay, as modified by this Court, remains in effect.



The debtor primarily presents the following contentions, all of which were raised before the Bankruptcy Court: (1) that Chartered did not perfect its security interest by properly filing a financing statement at the City Register's Office in New York County prior to the debtor's filing its Chapter XI petition, (2) that the trust receipts which constitute the alleged security agreements between Chartered and May Lee do not contain a sufficiently detailed description of the collateral, (3) that the security agreement with Chemical does not contain a sufficient description of the collateral, (4) that there was no valid security agreement with Chemical since there was no meeting of the minds, no consideration flowing from Chemical, the agreement was obtained by threats of economic duress, and was unconscionable, and (5) both Chartered's and Chemical's financing statements contain inadequate descriptions of collateral.

Rule 810 of the Rules of Bankruptcy Procedure provides, inter alia, that upon an appeal the district court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge of the credibility of the witnesses.

The Court below, after a trial, found that Chartered had filed its financing statement with the Secretary of State

in Albany, New York, and at the Register's Office in the County of New York on December 4, 1972. This Court, after reviewing the record, is of the opinion that Judge Galgay's finding that Chartered filed its financing statement at the Register's Office on December 4, 1972, is not clearly erroneous. The date stamp and filing number on the financing statement are prima facie evidence of filing on that date; the only evidence offered in rebuttal is that later it temporarily could not be found.

New York Uniform Commercial Code (hereinafter "U.C.C.") §9-403(1) (McKinney 1964) provides:

Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

Under this subsection,

the secured party does not bear the risk that the filing officer will not properly perform his duties : under [this] Section the secured party has complied with the filing requirements when he presents his financing statement for filing and the filing fee has been tendered or the statement accepted by the filing officer.

Official Comment to U.C.C. §9-407; accord, In re Royal Electrottype Corporation, 485 F.2d 394 (3d Cir. 1973).

Moreover, the rule of this subsection

is directly in accord with present New York law. Matter of Labb, 42 F. Supp. 542 (W.D.N.Y. 1941); Personal Property Law, §58--e(4); Lien Law §230--c. [The law prior to adoption of the U.C.C.]



New York Annotation to U.C.C. §9-403.

Thus, the debtor's contention that the secured party,     , Chartered, had the duty to insure proper filing and indexing is without merit. The cases cited by the debtor in support of its position are inapposite inasmuch as the financing statements in those cases were illegible, confusing, or erroneous whereas in the instant case there is nothing improper on the face of the financing statement.

In In re Royal Electrotpe Corporation, supra, the Court of Appeals for the Third Circuit, relying on U.C.C. §9-403(1), held that the allegedly secured party had a perfected security interest as against a trustee in bankruptcy where the filing officer erred in indexing the agreement in its records and showed the secured party as the debtor and the bankrupt as the creditor even though this erroneous information was also listed on the receipt given the appellant at the time of filing.

With regard to the adequacy of the description of the collateral in the Chartered security agreements (the trust receipts), the debtor's argument that the Bankruptcy Judge failed to deal with this issue is incorrect. In fact, Judge Galgay found that

[t]he security agreements each give a general description of the goods representing the collateral and refer to an attached invoice. The invoices are quite specific in describing

the Collateral. The Security agreements satisfy the Statutory requirement and are valid.

Supplemental Opinion, p. 3.

This Court, after examining the security agreements, concludes that the Bankruptcy Judge's finding that the description of collateral is sufficient to make possible the identification of the thing described is not clearly erroneous. His finding that the invoices were part of the security agreements is supported by the record and cannot be said to be clearly erroneous despite conflicting testimony on that issue. Moreover, the Court has considered the debtor's other contentions regarding the insufficiency of the security agreements and concludes that Judge Galgay's remaining findings were not clearly erroneous and that his conclusions of law were correct.

The Court affirms the Bankruptcy Judge's finding and conclusion that Chemical has a valid, binding security agreement which sufficiently identifies the collateral, for which Chemical gave consideration and which was not unconscionable. This Court is in agreement with the Court below that the fact that Chemical did not initial changes made by the debtor in the proposed security agreement presented to it is of no consequence inasmuch as the



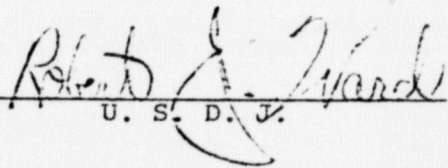
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Chemical officer signed the agreement after the debtor had made the changes and initialed them.

The Court considers the debtor's remaining contentions to be without merit. Accordingly, the order of the Bankruptcy Court that Chartered and Chemical have valid perfected security interests in assets of the debtor is affirmed and the stay previously entered is vacated.

It is so ordered.

Dated: July 19, 1974

  
\_\_\_\_\_  
U. S. D. J.

12  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x In Proceedings for an  
Arrangement:  
In the Matter :  
No. 74 B 166  
-of- :  
MAY LEE INDUSTRIES, INC., : ORDER  
Debtor. :  
-----x

THE CHARTERED BANK and the CHEMICAL BANK, as creditors having made application to this Court by Orders to Show Cause dated March 14, 1974 and March 27, 1974, respectively, for Orders reclaiming certain property of the Debtor, MAY LEE INDUSTRIES, INC., in which THE CHARTERED BANK and the CHEMICAL BANK asserted security interests; and said proceedings having duly come on to be heard at trial before me on April 9, 1974 and April 19, 1974, and HAWKINS, DELAFIELD & WOOD, attorneys for THE CHARTERED BANK, OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C., attorneys for the CHEMICAL BANK, having appeared in support of said petitions, and ARUTT, NACHAMIE & BENJAMIN, attorneys for the Debtor, having appeared in opposition thereto, and HEIKO & BUSH and JULES TEITELBAUM, co-attorneys for the Creditors' Committee having appeared, and the Court having filed its Opinion herein dated May 17, 1974, and a motion for rehearing and reargument of the aforesaid motion and for an Order modifying the aforesaid Opinion having been made by the Debtor herein on June 7, 1974, and the Court having permitted a rehearing and reargument of the motion and having allowed the Debtor to present its evidence



13

as requested in the motion for reargument, and the Debtor, by DAVID C. BUXBAUM, having appeared in support of the motion to reargue, and HAWKINS, DELAFIELD & WOOD, attorneys for THE CHARTERED BANK and OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C., attorneys for the CHEMICAL BANK, having appeared in opposition thereto, and the Court having filed its Opinion on the motion to reargue, dated June 10, 1974,

NOW, on reading and filing the Order to Show Cause dated March 14, 1974 and the Application to Reclaim Property of THE CHARTERED BANK dated March 14, 1974, with exhibits, with proof of due service thereof all in support thereof and the affidavits of DAVID C. BUXBAUM, sworn to April 1, 1974 and April 19, 1974 with exhibits thereto and the affidavit of LAURA SANTANGLO, sworn to April 19, 1974 with exhibits thereto, with proof of due service thereof, all in opposition to the motion of THE CHARTERED BANK and the Order to Show Cause dated March 27, 1974 and the Petition to Reclaim Property of CHEMICAL BANK duly verified on March 26, 1974, with exhibits, with proof of due service thereof, all in support thereof and the affidavit of DAVID C. BUXBAUM, sworn to the 1st day of April, 1974 in opposition thereto and the Opinion of the Court dated May 17, 1974, the Notice of Motion for reargument dated May 30, 1974, and the Opinion of the Court dated June 10, 1974,

NOW, on motion of HAWKINS, DELAFIELD & WOOD, attorneys for THE CHARTERED BANK and OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C., attorneys for the CHEMICAL BANK, it is

ORDERED, that the Application to Reclaim Property of THE CHARTERED BANK dated March 14, 1974 be, and it hereby is, granted in all respects; and it is further

ORDERED, that THE CHARTERED BANK has a perfected valid security lien on all collateral which is the subject of a series of trust receipts described in Exhibit "A" attached to the Order to Show Cause of THE CHARTERED BANK dated March 14, 1974 and THE CHARTERED BANK is entitled to the return of such goods and other collateral including the proceeds thereof, which is the subject of the trust receipts; and it is further

ORDERED, that the Petition to Reclaim Property of the CHEMICAL BANK sworn to on March 26, 1974 be, and it hereby is, granted in all respects; and it is further

ORDERED, that the CHEMICAL BANK has a valid perfected security lien on all collateral which is the subject of its security agreement and Redier thereto described in Exhibit "A", attached to the Order to Show Cause of the CHEMICAL BANK dated March 27, 1974, including the following collateral and all and any proceeds arising therefrom and all and any products of the collateral:

- (A) All inventory and goods of the Debtors, then owned or thereafter acquired, including inventory or goods in transit, and wherever located which are held for sale or lease or are to be furnished under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business, or finished goods and supplies customarily classified as inventory;



15

- (B) All rights of the Debtor to payments which are to be earned by performance under contracts, then existing or thereafter arising;
- (C) All accounts, notes, drafts, acceptances and other forms of obligations and receivables for goods sold or leased or services performed by the Debtor, then or thereafter arising, together with all guarantees and securities therefor and all right, title and interest of the Debtor in the merchandise which gave or shall give rise thereto, including the right of stoppage in transit;
- (D) Any other tangible or intangible property then owned or thereafter acquired, including without limitation fixed assets, fixtures and equipment;

and the CHEMICAL BANK is entitled to obtain such collateral;  
and it is further

ORDERED, that the Debtor, its officers, employees, agents and representatives turn over and surrender all rights, title and interest of Debtor and/or its agents in and to property including the proceeds thereof in which THE CHARTERED BANK and the CHEMICAL BANK have perfected valid security liens to THE CHARTERED BANK and the CHEMICAL BANK or their duly authorized employees, agents or representatives; and it is further

ORDERED, that the Debtor, its officers, employees, agents and representatives take no action to hinder or delay THE CHARTERED BANK or the CHEMICAL BANK from the reclamation of

property of the Debtor in which THE CHARTERED BANK or the  
CHEMICAL BANK have perfected valid security liens or take  
any action to dispose of the said property in any way  
whatsoever.

DATED: New York, New York  
June 14, 1974

15 *John J. Galgay*  
Bankruptcy Judge



FILED

17

JUN 11 1974

JOHN J. GALGAY  
BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter

-of-

MAY LEE INDUSTRIES, INC.,

Debtor.

:  
: In Proceeding for  
: an Arrangement  
:  
: No. 74 B 166  
:

: SUPPLEMENTAL

OPINION

APPEARANCES

HAWKINS, DELAFIELD & WOOD  
67 Wall Street  
New York, N.Y. 10005  
Attorneys for Chartered Bank  
By: Robert M. McCulloch, Jr.

OTTERBOURG, STEINDLER, HOUSTON  
& ROSEN, P.C.  
230 Park Avenue  
New York, N.Y. 10017  
Attorneys for Chemical Bank  
By:

ARUTT, NACHAMIE & BENJAMIN  
11 West 42nd Street  
New York, N.Y. 10036  
Attorneys for Debtor  
By: William S. Kaye

JOHN J. GALGAY, Bankruptcy Judge

An opinion was filed in this matter on May 20, 1974 determining issues raised in connection with Chartered Bank and Chemical Bank's Orders to Show Cause to obtain the collateral which was the subject of their secured liens against the Debtor.

On May 30th the debtor moved for rehearing and reargument before an Order was entered by the Court. On June 7, 1974 a rehearing was held and the debtor offered evidence on those items raised in its motion for rehearing.

As a preliminary observation the Court does not agree with the debtor that it is entitled to move under Rule 9(m) of the General Rules of the United States District Court, Southern District of New York, on the grounds that the Court overlooked matters set forth in prior memoranda.

The Court in its discretion has allowed a rehearing on the representation of the debtor that it may have misunderstood the Court's intentions that the Chemical Order to Show Cause was to be heard on April 19, 1974. It was present in Court, heard the Chemical<sup>1</sup> evidence, did not object to the introduction of vital documentary evidence and cross examined the officer of the Chemical Bank. Rather than to act on

the procedural points raised it seemed simpler to allow the rehearing.

The debtor's first point, (paragraph 1), deals with Charter's financing statement and whether it had been filed with the Register of New York County on December 4, 1972 as the document indicates. There was nothing added in this hearing that was not considered at the prior hearing.

The next point, (paragraph 2), relates to the adequacy of the description of the collateral in the Chartered security agreements (the trust receipts). The security agreements each give a general description of the goods representing the collateral and refer to an attached invoice. The invoices are quite specific in describing the Collateral. The Security agreements satisfy the Statutory requirement and are valid.

The next point, (paragraph 3), relates to the debtor's claim of confusion as to whether the Chemical matter was to be heard on April 19, 1974. The debtor was allowed to present its evidence at the rehearing and thus this point is moot. As part of this same paragraph, the debtor claimed the agreement dated April 23, 1973 (Applicant Chemical's Exhibit "C") between Chemical and the Debtor and two of its officers is invalid because there was no meeting of the minds and lack



of consideration.

After hearing testimony from Dr. Buxbaum, principal officer of the debtor in possession, and examining the document, the Court finds this was a valid binding agreement entered into by the parties; there was a meeting of the minds and was for valuable consideration. The Chemical officer signed it after the Debtor made changes and initialed them. The fact that Chemical did not initial the changes is of no consequence. *See not facts*

The next point, (paragraph 4), is moot inasmuch as the Debtor has been given the opportunity to contest the alleged security agreement of Chemical at this rehearing.

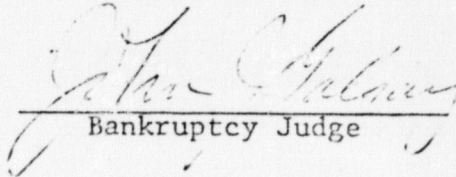
Paragraphs 5 and 6 deal with the Debtor's reply brief filed after the last hearing and referred to in prior opinion. The Court has read the reply brief and has considered relevant portions in reaching its decisions. One point raised in the reply brief dealt with the issue of unconscionability of some of the terms of the April 23, 1973 agreement (Applicant's Exhibit "C")--Banks are not charitable institutions and traditionally require broad protection of their interests when entering into contracts. The terms of this contract (Applicant Chemical's Exhibit "C") follow that pattern, but it is not unconscionable. *See*

Based on the entire record before this Court including the rehearing, I am convinced that Chartered Bank and Chemical Bank are entitled to reclaim the Collateral which was the subject of their Security Agreements.

Submit order consistent with this Court's opinion of May 20, 1974 and this supplemental opinion.

DATED: New York, N.Y.

June 10, 1974

  
Bankruptcy Judge

09

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter :

-of- :

MAY LEE INDUSTRIES, INC., :

Debtor. :

In Proceeding for an  
Arrangement

No. 74 B 166

OPINION

----- x

APPEARANCES

HAWKINS, DELAFIELD & WOOD  
67 Wall Street  
New York, N. Y. 10005  
Attorneys for Chartered Bank  
By: Robert M. McCulloch, Jr.

OTTERBOURG, STEINDLER, HOUSTON  
& ROSEN, P.C.  
230 Park Avenue  
New York, N. Y. 10017  
Attorneys for Chemical Bank  
By:

ARUTT, NACHAMIE & BENJAMIN  
11 West 42nd Street  
New York, N. Y. 10036  
Attorneys for Debtor  
By: William S. Kaye



JOHN J. CALGAY, Bankruptcy Judge

This proceeding was brought on by Order to Show Cause by the Chartered Bank of New York dated March 15, 1974 asking why an order should not be made and entered directing the debtor to deliver forthwith to the applicant all goods and inventory in the debtor's possession which are subject to the applicant's lien, created by various trust receipts or the proceeds received from the sale of goods covered by said trust receipts. The debtor filed an affidavit in opposition to the Chartered Bank's motion to reclaim, denying the principal allegations (paragraphs 8, 10 and 14) of the petition which relate to Chartered's claim of having perfected its lien by appropriate filing in the Office of Secretary of State of New York and in the office of the Register in the County of New York, in New York City.

There is also a companion Order to Show Cause filed March 27, 1974 by the Chemical Bank in which it seeks to have the debtor ordered to surrender all right, title and interest to inventory, contract rights, accounts receivable and all other properties and assets described in its moving

papers. Chemical Bank also alleges that it perfected a valid security agreement covering its collateral by appropriate filings. An affidavit in opposition to Chemical's motion to reclaim was filed by the debtor but merely argues that consideration of Chemical is premature and requested an adjournment thereof. It does not controvert the essential allegations of Chemical's claim to have a perfected valid security lien.

A trial was held on these proceedings on two days, April 9th and concluded on April 19th.

At trial, the Chartered Bank introduced a series of trust receipts together with the invoices describing the material subject to in the trust receipts, together with financing statements dated December 4, 1972, one filed in the Secretary of State Office in Albany, the other filed at the Register's Office in the City of New York. The Chartered documents were introduced through an officer of its bank in charge of security financing matters. He described the nature of the relationship between May Lee Industries and the Chartered Bank; that funds had been advanced on trust receipts in the amount of approximately \$500,000; that the debtor, May Lee was in default in that

W. Lee  
Industries  
May Lee



amount; that it demanded payment and that no payment was made. He also testified that the filing of the financing statements at both the Secretary of State Office and with the City of New York were done at and under his direction.

The debtor-in-possession, May Lee claims that the Chartered Bank's security interest did not attach since its filing, was not perfected under the terms of the Uniform Commercial Code and secondly, that the description contained in the financing statement describing the collateral covered by such statement did not conform to the requirements of the UCC.

With respect to the debtor's claim that the filing was not perfected it relies on basically two pieces of evidence; one was the testimony of the debtor-in-possession's employee named Laura Santangelo. According to Miss Santangelo's testimony on February 7, 1974, she was requested by the president of the debtor, David Buxbaum to go to the Register's Office, New York County, located at 31 Chambers St., New York City to check on the filings under the UCC at that office under the corporate name of the debtor, as well as under the name of a related corporation, May Lee Import Export Company. Her instructions were to

determine whether or not the Chartered Bank had filed its financing statement in connection with the trust receipts on which the Chartered Bank relied. She claimed that she personally checked the appropriate files and also enlisted the assistance of employees in the Register's Office to aid in her search. As a result of her search on that date, she found the financing statement by the Chemical Bank under May Lee Industries Inc., and another by David Buxbaum and a Lawrence M. Greenberg under May Lee Industries Inc. She failed however to find any financing statement on file by Chartered Bank. Several weeks later on April 2, 1974 she again rechecked the files of the Registers Office, New York County by first calling the Registers Office by telephone and was advised that the Registers Office had a filing for the Chartered Bank. Thereafter on April 3, 1974, she went to the Registers Office and found a Chartered Bank financing statement on file. She also testified that she inquired of the Registers' employees how it could happen that there presently is a filing on the Chartered Bank dated December 4, 1972, but on her previous visit in February, she found no such filing. She was told according to her testimony, that perhaps the original had been misfiled or



never filed. The second bit of evidence that the debtor-in-possession relies upon is the testimony of David Buxbaum, the president of the debtor, who claims that he had a telephone conversation with a creditor of the debtor who reported to him on or about January 15, 1974 that the only financing statements that the creditor found at the Registers Office, New York County were those of Chemical Bank and the one of David Buxbaum and Lawrence Greenberg. The creditor claimed he found no filing by the Chartered Bank on that date.

I have examined carefully the applicant Chartered's Exhibits 2, 3 and 4. Applicant's Exhibit 2 is a financing statement which appears to comply with the requirements of Sec. 9-402 of the UCC and was filed at the Registers Office at the County of New York, it is signed by the debtor and the secured party, gives an address of the secured party to which information concerning the security interest may be obtained, gives the mailing address of the debtor and contains the statement which describes the types of items of collateral. It also contained the date stamp of the office in which it was filed, reading 1972 December 4 - 10:33 AM and the file number 72P 33597. Likewise Chartered's Exhibit 4

filed with Secretary of State in Albany, N. Y. fulfills the requirements of Sec. 9-402 and Chartered's Exhibit 3 is a receipt from the Register, City of New York, Hall of Records, 31 Chambers Street, dated December 4, 1972 with a serial number 46685 in the amount of two dollars.

Thus the issues concerning Chartered Bank's Order to Show Cause are:

1) Has Chartered Bank a perfected valid security lien in the collateral which is the subject of the trust instruments?

2) Is it entitled to the return of the goods which constitute the collateral or the proceeds of the sale of such goods and any other collateral which are the subject of its security agreement?

I find that Chartered Bank has a perfected valid security lien on all collateral which was the subject of series of trust receipts described in Exhibit A attached to its Order to Show Cause dated March 14, 1974 and is entitled to the return of such goods and other collateral which is the subject of the trust receipts.

I find that Chartered filed its financing statements as required by the Uniform Commercial Code with the



Secretary of State in Albany, N. Y. and at the Registers Office in the County of New York on December 4, 1972, and on its face, the financing statements satisfies all the formal requisites of Sec. 9-402 of the Uniform Commercial Code.

In reaching the conclusions above the Court has considered the presumption of regularity that government agencies charged with particular duties, in this case, the duty of properly receiving and filing financing statements that such agencies regularly perform the assigned responsibilities. Here, the financing statements of Chartered carry the date December 4, 1972 and the Court presumes that they were properly filed with the Secretary of State and the Registers Office on that date. The evidence submitted by the debtor has failed to persuade the Court that the financing statements of Chartered were not filed on the date appearing on the face thereof.

So far as the debtor's argument that the financing statements fail to satisfy the requirements of Sec. 9-402(1) of the Uniform Commercial Code regarding the description of the collateral covered, I reject such contention. Bearing in mind that a financing statement is designed merely to

put creditors on notice that further inquiry is prudent, the evidence submitted persuades the Court that Chartered financial statement satisfied that need. See, In re: Leichter 471 F.2nd 785 (1972) and In re: Laminated Veneers Co. Inc., 471 Fed 2d 1124 (1973).

Now, turning to Chemical's Order to Show Cause in which it seeks a determination of the validity of its lien and requests the delivery of all collateral which was the subject of its security agreement. As stated previously the debtor filed an affidavit in opposition to such order but did not controvert the essential allegations of Chemical. It merely requested a delay before the Court make any determination regarding the security interest of Chemical. The request was denied and trial was held on this matter.

Chemical introduced in evidence without objection, five exhibits through an official of the bank. The first document (Exhibit A) was the security agreement between it and the debtor and it described in a rider thereto the items representing the collateral covered by such agreement. That agreement contained a paragraph which in substance stated Chemical's agreement did not include any collateral covered



by the security agreement of Chartered Bank under a financing statement filed by Chartered with Secretary of State of New York dated December 4, 1972.

The next document (Exhibit B) is an agreement of subordination and assignment between Chemical and the debtor's two principal officers, Buxbaum and Greenberg in which these officers subordinated their prior perfected liens to Chemical's. The third document (Exhibit Q) is an agreement between Chemical, the debtor, Buxbaum and Greenberg relating to overdue loans and notes of the debtor guaranteed by Buxbaum and Greenberg and arrangement for extensions of payment as well as an agreement to grant security interest in the debtor's inventory, accounts receivable, contract rights and all other property and assets it owns, except for that granted to Chartered. The fourth document is a copy of Chemical financing statement on file at the Secretary of State Office in Albany, New York and the Register's Office New York County, New York, N. Y. dated May 1, 1973 and April 30, 1973 respectively. Both documents were photocopies on a single page and marked as Exhibit D.

The last document is a single page continuing photocopies of financing statements of Lawrence Greenberg

and David Buxbaum as secured parties and the debtor is May Lee Industries. The financing statements are dated January 23, 1973 and January 22, 1973 on file at Secretary of State Office and the Register's Office in county of New York, N. Y.

Chemical offered evidence through an official that Chemical had loaned the debtor up to approximately \$163,000, that the financing statements contained in Chemical's Exhibit D referred to security on collateral for such loan, that demand was made of the debtor for payment and that such amount remains unpaid. Buxbaum, president of the debtor testified at the time of the filing of the debtor's petition under Chapter XI the maximum amount of assets owned by the debtor was approximately \$270,000.

The issues as to Chemical Bank are:

1) Does it have a perfected valid security lien in collateral which is the subject of its security agreement?

2) Is it entitled to return the goods which constitute the collateral under the security agreement?



I find that Chemical has a perfected valid security lien on all collateral which was the subject of its security agreement and is entitled to obtain the collateral.

The documents in evidence, and the testimony of the unpaid balance of loan after demand, all uncontradicted, make it clear that Chemical has carried its burden for the relief requested in its Order to Show Cause having had a valid security agreement and satisfied the filing requirements of Uniform Commercial Code.

During argument on these motions and in Chemical's papers it was urged that the two secured creditors had the right to combine their secured claims and make arrangement between them as to how the proceeds of the sale of the collateral on liquidation would be divided. I see no reason to deal with this point since Chartered lien gives it access to all of the collateral in possession of the debtor. Any that might escape its grasp would fall into Chemical's hands under the language of Chemical's liens.

Finally there was an unusual procedural matter which occurred after the trial concluded and the Court had taken the matter under advisement. The Court received a reply brief in opposition to Chemical Bank's application

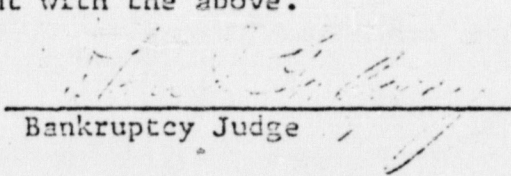
for reclamation by counsel for the debtor-in-possession, Arutt, Nachamie and Benjamin. No request was made or authority granted to file such a brief. However, the Court has examined it and finds that under the heading of Argument, counsel attempts to put into evidence matters which should have been raised at the trial. For example, the debtor-in-possession's counsel now attacks the security agreement claiming there was no meeting of the minds of the respective parties; that there was no consideration given for the security agreement; that the contract involving subordination agreements were unconscionable and ought to be stricken and that the agreements with the Chemical Bank were obtained by threats of economic duress against the debtors, etc. To cap it all the Reply Brief carries no signature of counsel who prepared it. I place no weight on the matters contained in the Reply Brief.

Chartered Bank and the Chemical Bank are entitled to reclaim the collateral which was the subject of their security agreements.

Submit order consistent with the above.

DATED: New York, N. Y.

MAY 17th, 1974

  
Bankruptcy Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

In the Matter  
of  
MAY LEE INDUSTRIES, INC.,  
Debtor.

In Proceedings for an  
Arrangement  
No. 74 B 166  
PETITION AND ORDER  
FOR CONTINUATION OF  
BUSINESS

----- X

UPON the petition for an arrangement under Chapter XI of the Bankruptcy Act, filed herein on the 11th day of February, 1974, and the petition of the debtor, and it appearing to the satisfaction of the Court that it is to the best interest of creditors to continue the debtor-in-possession of his property and to authorize it to operate the business until the further order of this Court, and no adverse interest being represented, it is

ORDERED: -

1. That the debtor shall continue in possession of its property, and shall have all the title and may exercise, consistently with the provisions of Chapter XI of the Bankruptcy Act, all the powers of a trustee appointed pursuant to Section 44 of the said Act, subject, however, at all time to the control of the Court and to such limitations, restrictions, terms and conditions as the Court may from time to time prescribe;

2. That the debtor-in-possession be and it hereby is authorized and directed, pending further Order of this Court, and subject to the control of this Court, to manage, operate and conduct its business, to employ, discharge and fix the salaries and compensation of all agents and employees.

36

excepting the officers of the debtor and the attorneys for the debtor; to pay any unpaid claim for wages and salaries to employees for services rendered for the week during which the filing of the petition herein was made to the end that the operation of the business of the debtor may not be interrupted; to buy supplies and other merchandise; to sell merchandise at not less than market prices and to render services, in normal course, for cash or on credit; to acquire such materials, equipment, supplies, services, or other property as shall be necessary and advisable in connection with the operation of said business and the management and preservation of said property, and to pay any purchase made on credit when due; to enter into any contracts in the normal course except to borrow money or pledge property, incidental to the management and preservation of said property, and to pay any purchase made on credit when due; to keep the property of the within estate insured in such manner and to such extent as the debtor may deem necessary and advisable; to collect and receive all rents, issues, income and profits, and all outstanding accounts, things in action and credits due or to become due to the within estate, and to hold and retain all monies then received to the end that the same may be applied under this or different or further orders of this Court; to pay and discharge out of any funds now or hereafter coming into its hands all taxes and similar charges lawfully incurred in the operation of said business and the preservation and maintenance of said property since the filing of said petition; and it is further

ORDERED, that said debtor-in-possession shall open new books of account as of the opening of business on the 11th day of February, 1974, in which new books of account



to have the debtor ordered to surrender all right, title and interest to inventory, contract rights, accounts receivable and all other properties and assets described in its moving

27

the debtor shall cause to be kept proper accounts of the earnings, expenses, receipts, disbursements and all obligations incurred by the debtor-in-possession, and transactions had in the operation of the business and the management; and said debtor-in-possession shall preserve proper vouchers for all payments made on account of such disbursements; and it is further

ORDERED, that the debtor-in-possession be and it hereby is authorized and permitted to deposit all monies now in its possession, as well as all monies that may hereafter come into its possession in an authorized depository of this Court and to withdraw therefrom by checks issued and signed by an authorized officer or officers of the debtor-in-possession; and it is further

ORDERED, that the debtor-in-possession include in the verified monthly reports herein provided for, a statement in detail of the amounts deducted for withholding and social security taxes and the amounts of sales tax collected, the name and address of the bank where special account is maintained, the dates and amounts of deposits therein and the dates and amounts paid to the taxing authorities therefrom, together with a bank statement; and it is further

ORDERED, that the debtor-in-possession shall file a verified monthly report in duplicate on the 15th day of each month which shall set forth a profit and loss statement and summary of the operations of the business during the preceding month and a verified statement of (a) receipts from all sources, classified, and balance on hand at beginning and at the end of the month; (b) disbursements for all purposes, classified; and (c) the amount of indebtedness incurred and remaining unpaid and contractual and other obligations assumed,

Industries and the Chartered Bank; that funds had been advanced on trust receipts in the amount of approximately \$500,000; that the debtor, May Lee was in default in that

38  
and such other matters as may be specified by the Court; and it is further

ORDERED, that the debtor-in-possession is authorized to omit the requirements of Rule XI-5, Subd. (d), requiring weekly statements of cash receipts and disbursements and subdivision 2(a) thereof, requiring a detailed inventory on hand at the beginning and at the end of each month; and it is further

ORDERED, that the debtor-in-possession is hereby directed and required to segregate and hold separate and apart from all other funds all monies deducted and withheld from employees or collected from others for taxes under any law of the United States, or of any state or municipality or political subdivision thereof during the pendency of the proceeding and to forthwith deposit the amounts so withheld or collected in a separate tax and trust account; and there shall also be deposited in such tax trust account all required and authorized deductions for union dues, hospitalization and other trust purposes; and the deposit of said items and any other items that may be considered to constitute trust items shall be used and disbursed only for the particular purposes for which they are set aside.

All Federal income taxes required to be withheld and all social security taxes required to be contributed or deducted as hereinabove stated, shall be remitted by the debtor-in-possession, together with a Federal depository receipt, to the debtor-in-possession bank of deposit not later than the end of the second business day next succeeding the day upon which taxes were required to be deducted or withheld.



under the UCC at that office under the corporate name of the debtor, as well as under the name of a related corporation, May Lee Import Export Company. Her instructions were to

39

All Federal excise taxes listed on Quarterly Federal Excise Tax Return Form 720, which the debtor-in-possession is required to collect or for which liability is incurred shall be deposited in the tax and trust account on or before the end of the calendar week next succeeding the week during which such amounts are required to be collected or liability for them is incurred; and all such excise tax funds on deposit at the end of said second calendar week, which represent amounts collected or incurred during the preceding calendar week shall forthwith be remitted by the debtor-in-possession to its bank of deposit, together with the Federal depository receipt for said amount.

The debtor-in-possession shall within one calendar week after making any remittances to a depository for Federal taxes, furnish the appropriate District Director of Internal Revenue with evidence that he has made the same, on forms furnished by, and under the conditions as may be prescribed by the District Director of Internal Revenue; and it is further

ORDERED, that each verified report, which the debtor-in-possession is required to file with the Court shall state the amounts and dates of payments transmitted by Federal depository receipts, and a copy of such report shall be transmitted promptly to the creditors' committee or its duly authorized representative.

The debtor-in-possession or his legal representative shall immediately transmit by mail, two copies of this order to the Regional Counsel, Internal Revenue Service, 30 Church Street, New York, New York; and it is further

ORDERED, that the debtor-in-possession segregate and hold apart from other funds, all monies withheld or collected for taxes under any law or any state or subdivision thereof, and deposit same in a separate designated bank account not later than within the calendar week next succeeding such collected or withholding; said funds may be withdrawn from said bank account only to pay the proper authorities the appropriate amounts at the times and in the manner perscribed by law. Provisions as to federal taxes withheld or collected are contained in a separate order this day made and entered.

Dated: New York, New York  
February 13<sup>th</sup>, 1974.

*John J. Galgay*  
BANKRUPTCY JUDGE

United States of America )  
Southern District of New York) ss

I, JOHN J. GALGAY, Bankruptcy Judge, in and for the said district, do hereby certify that the within instrument is a true and correct copy of the original as the same appears of record in my office.

In Witness Whereof, I hereunto set my hand this 13<sup>th</sup> day of February, 1974

*John J. Galgay*  
Bankruptcy Judge  
By *Elmer O. Prescott*  
Chief Clerk



-----x  
In the Matter : In Proceedings for an  
Arrangement  
-of- :  
No. 74 B 166  
MAY LEE INDUSTRIES, INC., :  
Debtor. : AMENDED ORDER  
: SUPPLEMENTING ORDER OF  
: JULY 3, 1974  
-----x

Notwithstanding anything contained in the  
Order of the Court (Ward, J.) dated July 3, 1974,  
it is further

ORDERED, that proceeds of all sales specified  
in the Order of July 3, 1974 by the debtor be deposited  
in the regular Debtor-In-Possession account maintained  
in the Franklin National Bank at 475 Park Avenue South,  
New York, New York and the debtor is required to deliver  
promptly to counsel for the Chartered Bank and Chemical  
Bank schedules of all such deposits, including names,  
addresses of payees and amounts, and it is further

ORDERED, the debtor shall not make any such  
deposits or make acceptance of checks for less than the  
invoice amount without the prior prompt written consent  
of counsel to the Chartered Bank and Chemical Bank,  
and it is further

ORDERED, that the debtor may not issue checks  
on the regular Debtor-In-Possession account, except for  
those less than \$100.00 in amount, without the prior prompt  
written consent of counsel for Chemical Bank, and it is  
further

ORDERED, that prior to any written approval of sales and shipping by the debtor, counsel for the Chartered Bank and the Chemical Bank be furnished by the debtor with a list giving the description of the goods, name and address of buyer, invoice price and cost price of the goods and the banks shall advise the debtor promptly of any objection to or approval of a sale or shipment, and it is further

ORDERED, that nothing herein shall be deemed a waiver of any claims by the Chartered Bank and the Chemical Bank.

Wherever the words "prompt" or "promptly" is used herein a 24-hour period is understood.

Dated: New York, New York  
July 12, 1974

Robert J. Ward  
U. S. D. N.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

In the Matter

:

- of -

:

In Proceedings for an  
Arrangement

MAY LEE INDUSTRIES, INC.,

:

No. 74 B 166

Debtor.

:

ORDER

- - - - - X

Upon the application of May Lee Industries, Inc., the debtor herein, by its attorneys, Arutt, Nachamie & Benjamin, David Buxbaum, Esq. of counsel thereto, for an order extending the stay of the Hon. John J. Galgay dated June 20, 1974, and upon all the prior proceedings and pleadings heretofore had herein, and after full hearing on said application before this Court on July 2, 1974, and pursuant to the decision and instructions of this Court at said hearing on July 2, 1974 in which the debtor was represented by the aforesaid counsel, and Chemical Bank was represented by its said counsel, Otterbourg, Steindler, Houston & Rosen, P.C., and The Chartered Bank was represented by its counsel, Hawkins, Delafield & Wood, wherein the debtor requested an order extending the above mentioned stay of the Hon. John J. Galgay, and wherein Chemical Bank and Chartered Bank requested that said stay be discontinued forthwith, it is

ORDERED, that the debtor is enjoined and stayed from selling, taking any steps to sell, contracting to sell, disposing or taking any steps to dispose of any assets, inventory, and other property of any description in the constructive or actual possession of the debtor, said assets, inventory and property having been determined by the Hon. John J. Galgay by order dated June 14, 1974 to be the subject of valid perfected security

interests in favor of either Chemical Bank or The Chartered Bank; except that the debtor shall have the right to sell any of said assets, inventory and property in any case wherein the consent of both Chartered and Chemical shall be obtained in writing; and it is further

ORDERED, that the proceeds of the prior sales of all assets, inventory and other property of any description by the debtor are to be paid into an escrow agent, said escrow agent being the Clerk of this Court, the proceeds of said sales not to be released except upon mutual agreement of the debtor, Chartered Bank and Chemical Bank; *or by order of the Court* and it is further

ORDERED, that the proceeds of any future sales of assets, inventory and other property of any description by the debtor, which by the terms of this order must have been made by mutual agreement of Chartered Bank, Chemical Bank and the debtor, shall be paid to the Clerk of this Court, and are not to be released except upon mutual agreement of the debtor, Chartered Bank and Chemical Bank; *or by order of the Court* and it is further

ORDERED, that should the parties not be able to agree upon the implementation of this order or any aspect hereof, then they or any of them may apply to this Court on speedy notice to the other parties for resolution of such disagreement; and it is further

ORDERED, that all other portions of Judge Galgay's June 20th order not expressly dissolved herein shall remain in full force and effect, to wit:

"ORDERED that The CHARTERED BANK and CHEMICAL BANK shall have the right to have representatives of David Strauss & Co., Inc. enter upon any of the Debtor's premises from time to time during regular business hours for the purpose of making a complete inventory and catalogue of any of such items which are subject to their security agreement; and it is further



ORDERED that The CHARTERED BANK and CHEMICAL BANK shall have the right to inspect the books and records of the Debtor for the purpose of identifying accounts receivable related to the proceeds of the sale of said inventory and items subject to their security agreements; and it is further

ORDERED that the Debtor, its employees, agents, attorneys and representatives shall cooperate with The CHARTERED BANK and CHEMICAL BANK, their employees, agents, attorneys and representatives in any inspection of the Debtor's property or books and records that said Banks may reasonably request; and it is further

ORDERED that The CHARTERED BANK and CHEMICAL BANK are hereby enjoined and restrained pending the determination of this appeal from commencing or continuing any action in an attempt to repossess their secured property; and it is further

ORDERED that this order shall remain in full force and effect until the determination of the appeal now pending before this court with respect to the security interests of The CHARTERED BANK and CHEMICAL BANK.

Dated: New York, New York  
July , 1974

Robert J. Ward  
U.S.D.J.

46

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK JUN 20 1974

In the Matter

JOHN J. GALGAY  
Bankruptcy Judge

In Proceedings for  
an Arrangement

-of-

MAY LEE INDUSTRIES, INC.,

No. 74 B 166

ORDER

Debtor.

Upon the application of MAY LEE INDUSTRIES, INC.,

the above-named Debtor praying for an order staying the order of this Court entered on June 14, 1974, and after full hearing on said application before this Court on June 18, 1974, and pursuant to the decision of this Court at the hearing on June 18, 1974, in which the Debtor was represented and CHEMICAL BANK was represented by its counsel OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C. and CHARTERED BANK was represented by its counsel HAWKINS, DELAFIELD & WOOD, wherein the Debtor prayed for an order staying CHEMICAL BANK and CHARTERED BANK from attempting to repossess certain property of the Debtor pursuant to the Order of this Court of June 14, 1974, it is

ORDERED that CHEMICAL BANK and CHARTERED BANK are hereby, enjoined and stayed from commencing or continuing any action in an attempt to repossess their secured property until Friday, June 21, 1974, provided only that by Friday, June 21, 1974, MAY LEE INDUSTRIES, INC., the Debtor, files its Notice of Appeal and designates the record which is to be sent up on appeal, and a statement of the issues the debtor intends to present on appeal, and it is further



ORDERED that, upon filing of said Notice of Appeal, CHEMICAL BANK and CHARTERED BANK are hereby, enjoined and stayed from commencing or continuing any action in any attempt to repossess their secured property until such time as an appeal is heard by the District Court. Any further stay shall be at the discretion of said District Court, and it is further

ORDERED that the Clerk of this Court be directed to expedite the hearing on any appeal from the Order; and it is further

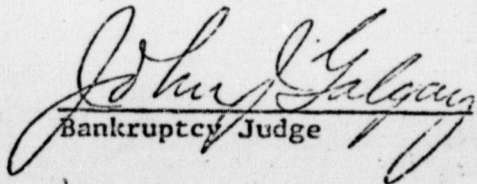
ORDERED that The CHARTERED BANK and CHEMICAL BANK shall have the right to have representatives of David Strauss & Co., Inc. enter upon any of the Debtor's premises from time to time during regular business hours for the purpose of making a complete inventory and catalogue of any of such items which are subject to their security agreement; and it is further

ORDERED that The CHARTERED BANK and CHEMICAL BANK shall have the right to inspect the books and records of the Debtor for the purpose of identifying accounts receivable related to the proceeds of the sale of said inventory and items subject to their security agreements; and it is further

ORDERED that the Debtor, its employees, agents, attorneys and representatives shall cooperate with THE CHARTERED BANK and CHEMICAL BANK, their employees, agents, attorneys and representatives in any inspection of the Debtor's property or books and records that said Banks may reasonably request.

DATED: New York, New York

JUNE 20th, 1974

  
Bankruptcy Judge

\* \* \* \*

"... The Court has read the reply brief and has considered relevant portions in reaching its decisions. One point raised in the reply brief dealt with the issue of unconscionability of some of the terms of the April 23, 1973 agreement (Applicant's (CHEMICAL'S) Exhibit "C") -- Banks are not charitable institutions and traditionally require broad protection of their interests when entering into contracts. The terms of this contract (Applicant CHEMICAL'S Exhibit "C") follow that pattern, but it is not unconscionable." (Galgay Supplemental Opinion, June 10, 1974, pp. 3 and 4) (I.D. 26).

In affirming the decision of Bankruptcy Judge Galgay, the District Court (Ward, J.) held:

"The Court affirms the Bankruptcy Judge's finding and conclusion that Chemical has a valid, binding security agreement which sufficiently identifies the collateral, for which Chemical gave consideration and which was not unconscionable. This Court is in agreement with the Court Below that the fact that Chemical did not initial the changes made by the debtor (MAY LEE) in the proposed security agreement presented to it is of no consequence inasmuch as the Chemical officer signed the agreement after the debtor (MAY LEE) had made the changes and initialed them.

The Court considers the debtor's (MAY LEE'S) remaining contentions to be without merit. . . . Chemical . . . (has) valid perfected security interests in assets of the debtor (MAY LEE). . . . (Ward Decision and Order, July 19, 1974, pp. 6 and 7) (I. D. 11).



## ARGUMENT

### Summary

It is respectfully submitted that the Findings of Fact of Bankruptcy Judge John J. Galgay contained in his Opinion of May 17, 1974 and his Supplemental Opinion dated June 10, 1974 were not clearly erroneous and should not be disturbed, as provided for by Rule 810 of the Rules of Bankruptcy Procedure, that his Conclusions of Law as contained in said Opinions were consistent with said Findings of Fact, that his Order of June 14, 1974 be affirmed and the Decision and Order of District Judge Robert J. Ward of July 19, 1974 affirming the Order of Bankruptcy Judge Galgay of June 14, 1974, all be affirmed and this appeal be dismissed.

### Scope of Appeal

Pursuant to Rule 810 of the present Rules of Bankruptcy Procedure and as formerly provided for by General Order 47 of the General Orders in Bankruptcy adopted by the Supreme Court of the United States, it is the settled rule that findings of fact by a Bankruptcy Judge are conclusive

upon review by the District Court unless clearly erroneous and should not be disturbed unless there is most cogent evidence of mistake or miscarriage of justice. (See 2 Colliers on Bankruptcy (14 Ed. 1971) Paragraph 39.28 and the cases cited thereunder.)

Similarly, the rule is well established in this Court that where an appeal brings up for review concurrent findings of fact by the Bankruptcy Judge and the District Court, they can be set aside only if "clearly erroneous", particularly where the findings involve questions of credibility of witnesses who testified before the Bankruptcy Judge.

In re Ira Haupt & Co.,  
379 F. 2d 884 (2d Cir. 1967)

Simon v. Agar,  
299 F. 2d 853 (2d Cir. 1962)

Clearly, an examination of the Bankruptcy Judge's Findings of Fact should have put to rest and an end to the repeated efforts of MAY LEE and its principal, BUXBAUM, to frustrate the rights of CHEMICAL and CHARTERED to reclaim the assets of MAY LEE to which the BANKS are clearly entitled. The rights of the BANKS to reclaim MAY LEE'S assets were given to the BANKS by MAY LEE when it entered into the security



agreements with the BANKS with full knowledge of the terms, provisions and conditions of those security agreements.

The Referee's Findings of Fact

1. CHARTERED'S Financing Statements

During the course of the hearings before the Bankruptcy Judge, MAY LEE endeavored to show that the financing statement required to be filed in accordance with the Uniform Commercial Code had not been properly filed with the recording office as provided for by the Uniform Commercial Code. In its Brief submitted to this Court, MAY LEE goes to great length in discussing the testimony of various witnesses relied upon by MAY LEE who had examined the records of the New York County Clerk's Office and who could not find such filing prior to the commencement of the Chapter XI proceedings.

Bankruptcy Judge Galgay's Opinion of May 17, 1974 unequivocally found that the financing statements as required by the Uniform Commercial Code were properly filed. Bankruptcy Judge Galgay stated, in relevant part:

"I find that Chartered filed its financing statements as required by the Uniform Commercial Code with the Secretary of State in Albany, N.Y. and at the Register's Office in the County of New York on December 4, 1972, and on its face, the financing statements satisfies all the formal requisites of Sec. 9-402 of the Uniform Commercial Code." (Emphasis added) (Galgay Opinion, May 17, 1974, pp. 7 and 8) (I. D. 25).

Nevertheless, MAY LEE claims that at all times during the various hearings ". . . No evidence was ever introduced to indicate that a financing statement by Chartered Bank was ever found in the files of New York County prior to May Lee going into Chapter XI proceedings. There was introduced into evidence a document purporting to be the original filing in New York County by Chartered Bank." (MAY LEE Circuit Court Brief, pp. 8 and 9)

The claim of MAY LEE that there was no evidence of filing by CHARTERED before the Chapter XI proceeding and that a document purporting to be the "original" filing in New York County was introduced into evidence is outrageous and a total distortion of the facts. First, the testimony shows that CHARTERED introduced for identification a copy of the UCC-1 official filing receipt for a



secured party showing the filing of a financing statement on December 4, 1972 with the New York City Register (April 9, 1974 Hearing Transcript, p. 61) (I. D. 23). Second, the official filing receipt for a secured party which was stamped on December 4, 1972, was marked in evidence without objection by MAY LEE (April 19, 1974 Hearing Transcript, p. 32) (I. D. 24).

MAY LEE'S distortion of the facts is despicable. The thrust of MAY LEE'S argument is that notwithstanding the fact that the financing statements were properly filed, searches made by their representatives failed to disclose such filings and that consequently the financing statements failed to effect proper notice. This argument is fallacious in light of the provisions of Section 9-403 of the Uniform Commercial Code which provides as follows:

"(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article."

It has been held that the rule of this subsection that "presentation for filing of a financing statement and tender of the filing fee or acceptance of

the statement by the filing officer constitutes filing" is directly in accord with the Law of the State of New York prior to the effective date of the Uniform Commercial Code.

In re Labb,  
42 F. Supp. 542 (W.D.N.Y. 1941)

That the presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under Article 9 is further made clear by the Official Comments to Section 9-407 of the Code which states as follows:

"Note, however, that under Section 9-403(1) the secured party does not bear the risk that the filing officer will not properly perform his duties; under that Section the secured party has complied with the filing requirements when he presents his financing statement for filing and the filing fee has been tendered on the statement accepted by the filing officer."

In re Royal Electrottype Corporation,  
485 F. 2d 394 (3d Cir. 1973)

Section 9-401 provides as follows:

"(1) The proper place to file in order to perfect a security interest is as follows:

\* \* \* \*



(c) in all other cases, in the department of state and in addition, if the debtor has a place of business in this state and in only one county of this state, also, in the office of the filing officer of such county;

(d) the terms "filing officer" or "recording officer" means the county clerk of the county, except in the counties of Bronx, Kings, New York, and Queens where it means the city register in the county: . . ."

It is to be noted that MAY LEE has a place of business in the State of New York and in only one county, namely, the County of New York, and consequently the financing statements were filed by CHARTERED in the Office of the City Register (New York County) as well as with the Secretary of State in Albany, New York.

In light of the fact that the required steps were taken by CHARTERED by filing a financing statement with the Secretary of State and the Register of New York County as required by Sections 9-401 and 9-403 as hereinabove set forth, the interest of CHARTERED was perfected irrespective of whether or not MAY LEE or any of the representatives it relies on were able to find a notice of such filing. Therefore, Bankruptcy Judge Galgay correctly concluded that in light of the facts as so found by him with

respect to the filing of the financing statements, the security interest of CHARTERED was valid. (Galgay Opinion, May 17, 1974, p. 8) (I. D. 25).

2. CHARTERED'S Security Agreements

The Supplemental Opinion of Bankruptcy Judge Galgay dated June 10, 1974 at p. 3 (I. D. 26) deals with the adequacy of the security agreements of CHARTERED and determines that the security agreements "each give general description of the goods representing the collateral and refer to an attached invoice. The invoices are quite specific in describing the collateral. The security agreements satisfy the statutory requirement and are valid." It is to be noted that during the course of the reargument MAY LEE argued that the security agreements of CHARTERED failed to adequately describe the goods. After considering that argument, the Bankruptcy Court found that the security agreements did give actual general description of the goods and referred to attached invoices which the Court found were specific in describing the collateral and further found that the security agreements satisfied the statutory requirement and were valid.



Section 9-110 provides as follows:

"For the purposes of this Article any description of personal property . . . is sufficient whether or not it is specific if it reasonably identifies what is described."

The Official Comment to Section 9-110 cited above states that "The requirement of description of collateral is evidentiary. The test of sufficiency of a description laid down by this Section is that the description do the job assigned to it---that it make possible the identification of the thing described. Under this rule courts should refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called 'serial number' test."

The Bankruptcy Court expressly found that the security agreements each gave a general description of the goods and that the security agreements satisfied the statutory requirements. (Galgay Supplementary Opinion June 10, 1974, p. 3) (I. D. 26) On behalf of CHEMICAL, it is further respectfully submitted that insofar as MAY LEE'S argument relating to the adequacy of the description is concerned, inasmuch as CHEMICAL has a security interest in the entire

inventory of MAY LEE subject only to CHARTERED'S prior security interest, if it were decided by this Honorable Court that the Orders of the Courts below as to the adequacy of the description inventory subject to security interest of CHARTERED was "clearly erroneous" then the effect would be to allow CHEMICAL to reclaim the inventory instead of CHARTERED.

3. CHEMICAL'S Security Agreements

As set forth in MAY LEE'S Brief to this Court at pages 31-33 and as was argued during the course of the rehearing and reargument before the Bankruptcy Court, MAY LEE contends that CHEMICAL'S security agreement was invalid because ". . . there was no agreement to the terms of the security agreement." This argument is an absolute distortion of the facts as adduced during the course of the hearings before the Bankruptcy Court.

It was not until the reargument that MAY LEE developed, as another one of its many opposing arguments to the validity of CHEMICAL'S lien, the suggestion that



since the security agreement was not initialled by CHEMICAL at several places initialled by MAY LEE, the security agreement was vitiated. The MAY LEE Brief submitted to this Court fails to indicate, however, that the Bankruptcy Court fully considered the argument raised by MAY LEE and found, from the evidence presented to it, that the CHEMICAL officer signed the agreement after MAY LEE had made the changes and had initialled them. (Galgay Supplemental Opinion, June 10, 1974, p. 4) (I. D. 26) The agreement, as so modified, constitutes the agreement between the parties and is recognized by CHEMICAL. It does not argue that the changes made and initialled by MAY LEE are to be disregarded. If it did, there is no question but that MAY LEE'S arguments would have merit. However, and again it must be repeated solely for the purpose of stress, the agreement, as changed and initialled, constitutes the security agreement recognized by CHEMICAL notwithstanding the fact that it did not initial the changes. The fact that it signed the agreement after the changes were made is a clear demonstration of its willingness to accept the agreement in its written form and as introduced into evidence before the

Bankruptcy Court. This was duly considered by the Bankruptcy Court when it made its Findings that the agreement was valid and binding on the parties. (Galgay Supplemental Opinion, June 10, 1974, p. 4) (I. D. 26)

MAY LEE's distortion of the facts in connection with the alleged lack of agreement regarding the terms of the security agreement with CHEMICAL is particularly bizarre because BUXBAUM admitted to Bankruptcy Judge Galgay that CHEMICAL signed the agreement after MAY LEE made changes with regard to it. (June 7, 1974 Hearing Transcript, pp. 20-34) (I. D. 28)

In addition, CHEMICAL'S Exhibit "Z" in evidence (June 7, 1974 Hearing Transcript, p. 56) (I. D. 28) shows that the agreement was ratified and reaffirmed by MAY LEE and BUXBAUM on December 13, 1973.

4. April 23, 1973 Agreement

MAY LEE argues that if the agreement entered into between it and CHEMICAL dated April 23, 1973 under which the Security Agreement was provided for, is invalid then CHEMICAL is not a secured party. MAY LEE, in its



Brief to this Court, at page 41, would have this Honorable Court believe that the April 23, 1973 agreement was obtained by economic duress and coercion and as such is invalid. For MAY LEE to argue that the Bankruptcy Court did not address itself to that argument nor to the question of consideration or illegality is to completely ignore the Findings of the Bankruptcy Court as contained in its Supplemental Opinion at page 4 thereof wherein it commented that it had considered the various arguments proposed by MAY LEE and found that the terms of the agreement of April 23, 1973 were consistent with the policy of banks which "traditionally require broad protection of their interests when entering into contracts" and which further found that the agreement was not unconscionable.

CHEMICAL'S Exhibit "Z" in evidence (June 7, 1974 Hearing Transcript, p. 56) (I. D. 28) shows that on December 13, 1973, CHEMICAL waived certain defaults under the terms of the April 23, 1973 agreement. CHEMICAL waived a minimum capital requirement for MAY LEE of the April 23, 1973

agreement prospectively through June 30, 1974. This co-operation with MAY LEE is now strangely labeled "coercion" and "duress". Of course, nothing could be further from the true facts. There was no coercion or economic duress, according to the documentary evidence and the Courts below.

5. Description of CHEMICAL'S Security Interest

MAY LEE argues in its Brief at page 35 ". . . one has no idea of the precise collateral . . . (covered by CHEMICAL'S security agreement)." In doing so it cites the provision of the April 23, 1973 agreement and the security agreement which provides that CHEMICAL'S security interest shall not apply ". . . that in which it (MAY LEE) has granted a security interest to the Chartered Bank . . . and except for security interests which may be required for future inventory, letter of credit and security acceptance financing." (April 23, 1973 Agreement, Paragraph 2, pages 2 and 3, CHEMICAL'S Exhibit "C" in evidence, April 19, 1974 Hearing Transcript, p. 74) (I.D. 24)

In interpreting the foregoing provision MAY LEE



concludes that the agreement with CHEMICAL eliminates all goods financed under security agreements with CHARTERED and other banks and that since almost all of the inventory remaining was financed by either CHARTERED or other banks and since CHEMICAL allegedly has no interest in such assets it raises the question as to what assets of MAY LEE CHEMICAL does have a security interest in. It concludes that the only thing remaining is the furniture of MAY LEE. This argument is utterly absurd and has no basis in fact.

The security agreement entered into between MAY LEE and CHEMICAL clearly spells out the nature of the collateral and as was determined during the course of the hearings before the bankruptcy Judge, the exceptions referred to in the security agreement arose solely by virtue of the fact that the parties recognized that at the time they entered into their security agreement a portion of MAY LEE'S assets were encumbered by a security interest held by CHARTERED and, in order to enable MAY LEE to enter into subsequent security interests with other suppliers or lenders who might require a security interest in the assets of MAY LEE, CHEMICAL provided for such a possibility should

it be required in the future. The clause was drafted by MAY LEE.

This is but another example of the ingratitude demonstrated by MAY LEE towards CHEMICAL and its past efforts to finance MAY LEE and enable it to carry on its business when it needed funds to operate. Outside of the security interests of CHARTERED and CHEMICAL and a prior subordinated interest of the principals, there were no other security interests nor was there any evidence of any other security interests introduced during the course of the hearings before the Bankruptcy Court. Thus, based upon the record taken before him not only during the course of the original hearings but the rehearing and reargument, the Bankruptcy Court and the District Court properly found that both CHARTERED and CHEMICAL were entitled to reclaim the collateral which was the subject of their security agreements.

It is clear that MAY LEE has no feasible prospect of operating at a profit in the future. It is respectfully submitted that in the course of the various adjourned hear-



ings before the Bankruptcy Court at which MAY LEE has reported as to its operations, it has consistently indicated that it has been operating at a loss. Requests by the BANKS for indemnity to indemnify the estate against subsequent loss as required by Section 326 of the Bankruptcy Act had been denied by the Bankruptcy Court in order to give MAY LEE every opportunity to continue its operations notwithstanding such loss. The patience demonstrated by the Bankruptcy Court and its willingness to give MAY LEE every opportunity to continue with its arrangement proceedings has been manifested not only by such reluctance to require indemnity, but also, its willingness to consider the rehearing and reargument of its decision.

In fact, MAY LEE specifically and candidly admitted that it had received a full and fair hearing in the Bankruptcy Court before Bankruptcy Judge Galgay. (Transcript of Rehearing, dated June 7, 1974, p. 8) (I. D. 28)

In view of all of the foregoing and MAY LEE'S candid admission that all of its claims had received a full

and fair hearing by Judge Galgay, it is both sad and shocking to note that MAY LEE now claims in its Brief to this Court at page 30 that it ". . . was not given a proper opportunity to present his [sic] case."

To the contrary it is submitted that the Courts below properly held that after a full and fair hearing CHARTERED and CHEMICAL have valid and proper security interests in the assets of MAY LEE sufficient to warrant their reclaiming the same as originally provided for in the Order of the Bankruptcy Judge, John J. Galgay dated June 1, 1974.

#### CONCLUSION

It is respectfully submitted that the Findings of Fact of Hon. John J. Galgay, Bankruptcy Judge, as contained in his Opinion of May 17, 1974 and his Supplemental Opinion dated June 10, 1974 and the Decision of the District Court, Robert J. Ward, D.C.J. dated July 19, 1974, were not clearly erroneous and should not be disturbed, as provided for by Rule 810 of the Rules of Bankruptcy Procedure, that



the Conclusions of Law as contained in said Opinions were consistent with said Findings of Fact, that the Orders of the Bankruptcy Judge, dated June 14, 1974 and the District Court dated July 19, 1974, be affirmed and that the appeal herein be dismissed.

Respectfully submitted,

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